BEFORE THE ARBITRATOR

In the Matter of the Resolution of an Impasse Between

BOARD OF REGENTS, STATE OF IOWA
(UNIVERSITY OF NORTHERN IOWA)

and

THE UNI UNITED FACULTY

Case No. 563/1

Appearances:

Thomas Evans, General Counsel, appeared on behalf of the Employer.

Charles Gribble, Attorney At Law, Parrish, Krundenier, Dunn, Boles, Gribble, Parrish, Gentry & Fisher, LLP, appeared on behalf of the Union

INTEREST ARBITRATION AWARD

Board of Regents, State of Iowa, herein referred to as the "Employer," and UNI United Faculty, herein referred to as the "Union," selected the undersigned from a panel of arbitrators supplied by the Iowa Public Employment Relations Board (herein "PERB") to hear and decide their dispute with respect to their July 1, 2011, to June 30, 2013 collective bargaining agreement pursuant Sec. 20.22, Iowa Code. I held a hearing in the matter on February 23, 2011, Cedar Falls, Iowa. The parties each filed a brief, the last of which was received March 1, 2011. The parties agreed that the award would be due 15 days from the date of filing of the briefs.

ISSUES[1]

There are four impasse items in dispute. They are salary, insurance, grievance procedure and leave:

1. Wages:

Employer:

2011-12	2012-3
1.0% 7/1/11	1.0% 7/1/12 1.5% 1/1/13

[1] The parties resolved the other issues in dispute after the fact finding award.

Union:

2011-12	2012-3
2.25% 7/1/11	2.25% 7/1/12
1.25% 1/1/12	1.25% 1/1/13

2. Insurance:

Employer:

Section 9.1, Group Life Insurance

Subdivision 9.11, Life Insurance

Decrease the current life insurance plan from 2.5 member's budgeted salary to 1.5 member's budgeted salary.

Subdivision 9.12, Accidental Death and Dismemberment Insurance

Under the expiring agreement, the Employer provides accidental death and dismemberment insurance equal to the life insurance benefit. The Employer proposes to eliminate this insurance entirely.

Section 9.3 Health Insurance[2]

Subdivision 9.31 2011-2013 Health Insurance Contribution

~~Effective July 1, 2009, the Board shall contribute toward the premium of eligible bargaining unit members the full cost of premiums for Faculty Members having individual coverage. The remaining twenty-five percent (25%) of the dependent cost shall be borne by the Faculty Member and paid by payroll deduction. In the event a Faculty Member has a spouse/domestic partner also in the bargaining unit, the Board shall contribute an additional individual contribution toward the purchase of dependent coverage or the seventy-five percent (75%) regular contribution toward dependent coverage, whichever is greater.~~

New Language

Effective July 1, 2011, the Board shall contribute one hundred percent (100%) of the cost of the premium of eligible Faculty Members who enroll in individual PPO or HMO coverage. For those eligible Faculty members who enroll in an individual CMM coverage, the Board shall contribute the same dollar amount toward the CMM plan as is contributed for the PPO plan. For those members qualifying for dependent coverage, the Board shall contribute eighty percent (80%) of the dependent premium cost of the PPO plan. For those eligible Faculty members who enroll in dependent CMM coverage or dependent HMO coverage, the Board shall contribute the same dollar amount toward the CMM plan or the HMO plan as is contributed for the PPO plan. The balance of the premium costs for single or dependent coverage shall be borne by the Faculty Member and paid by payroll deduction.

[2] See Appendix A for the major features of the Employer's proposed plan design.

In the event a Faculty Member has a spouse/domestic partner also in the bargaining unit, the Board shall contribute ninety percent (90%) of the dependent premium cost towards the PPO plan and contribute the same dollar amount toward the CMM plan and HMO plan.-
Current faculty who opt to take the new PPO plan or the HMO plan during an open enrollment period or qualifying life event are foreclosed from returning to the CMM plan for the duration of their employment at UNI.

Faculty members whose effective date of employment commences after June 30, 2011 shall only be eligible to enroll in the PPO plan or HMO plan coverage.

Subdivision 9.33 Change in Coverage

The parties agree that there will be no substantial change in the ~~current~~ negotiated health insurance coverage during the term of this Agreement except by agreement of the parties.

Section 9.4 Dental Insurance

Subdivision 9.41 2011-2013 Dental Insurance Contribution

Strike the following language:

~~Effective July 1, 2009, the Board shall contribute toward the premium of eligible bargaining unit the full cost of premiums for members for Faculty Members having individual coverage. For those members qualifying for dependent coverage, the Board shall contribute the same dollar amount toward such dependent coverage as is contributed for individual coverage. In the event a Faculty Member has a spouse/domestic partner also in the bargaining unit, the Board shall contribute an additional individual contribution toward the purchase of dependent coverage.~~

New Language:

Effective July 1, 2011, the Board shall contribute one hundred percent (100%) of the cost of the premium of eligible Faculty members who enroll in individual Plan 1 dental coverage. For those eligible Faculty members who enroll in individual Plan 2 dental coverage, the Board shall contribute the same dollar amount toward Plan 2 as is contributed toward Plan1. For those members qualifying for dependent coverage, the Board shall contribute the same dollar amount toward dependent coverage as is contributed for individual coverage.

In the event a Faculty member has a spouse/domestic partner also in the bargaining unit, the Board shall contribute an additional individual contribution toward the purchase of dependent coverage.

The balance of the premium costs for single or dependent coverage shall be borne by the Faculty member and paid by payroll deduction.

Dental Plan 2 coverage is only available to employees who enroll in the PPO or HMO health plan. Faculty members whose effective date of employment commences after June 30, 2011 shall only be eligible to enroll in dental Plan 2 coverage.

The parties agree that there will be no substantial change in the ~~current~~ negotiated dental insurance coverage during the term of this Agreement except by agreement of the parties.

Union:

The Union proposes no change in the current contractual provisions for all insurance.

3. Grievance Procedure:

Union: The Union proposes to amend the current Article 10, Grievance Procedure as follows:[3]

Section 10.0 Definitions
Subdivision 10.01 Grievance
A "grievance" is an allegation by a ~~Faculty Member~~ bargaining unit member, members or United Faculty (union) that there has been a violation, misinterpretation, or misapplication of any provision of this Master Agreement, except for matter subject to appeal under Article Eleven (Appeal), which shall be resolved under the procedures of that Article. ~~The United Faculty may file a grievance on organizational rights specified in this Agreement and may waive the first two (2) levels under Section 10.3.~~

Subdivision 10.24 Filing of Initial Grievance

~~A Faculty Member~~ The grieving person(s) or United Faculty who alleges that contract provisions have been violated shall initially seek to resolve the problem by informal means through administrative channels. This procedure must be initiated within thirty (30) days following the time at which the aggrieved party could reasonably have been aware of the occurrence of the grievance. However, under no circumstances shall a grievance be considered timely after twelve (12) calendar months from the date of occurrence.

Employer:

The Employer proposes to keep the current language.

4. Leave for Union Business

The Union proposes to change Article VII, Leaves to grant 3 credit hour release time leave of absence for each semester for a Union grievance officer as follows:

ARTICLE VII – LEAVES

Section 7.9 Union Leave/Release Time
The United Faculty president shall be granted a 3 credit hour release time leave of absence with pay each semester during the year s/he is serving as President of the Union. ~~This leave is contingent upon the University securing a satisfactory substitute for the faculty member serving as President. United Faculty shall be responsible for reimbursing the University one half (1/2) the cost of the substitute. The United Faculty President can only make use of this release time if the reimbursement payment has been approved by the United Faculty Central Committee.~~ The Grievance Officer shall be granted a 3 credit hour release time leave of absence with pay each semester during the year s/he is serving as the Grievance Officer.

[3] Interlineations represent deletions from the current provision and underlined portions represent additions.

BACKGROUND

The University of Northern Iowa is one of three state-run higher education institutions in Iowa. The other two institutions are, of course, the University of Iowa and Iowa State University. It serves 13,201 students, 91.7% are residents of Iowa. Unlike the other two institutions, the University of Northern Iowa is not a "research" institution in that it does not receive significant contracts and grants to perform research. The Employer has two units of represented employees. One is non-professional employees who negotiate with the State of Iowa rather than with the Board of Regents. The other is the instant unit of professional staff. There are 824 members of the faculty.

DISCUSSION

1. Standards

Under Sec. 20.22, Iowa Code, the parties are to submit their final offer on each impasse item in dispute. The arbitrator must select the final offer of one party or that of the other, without modification. The arbitrator is to consider the following standards:

> 9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:
>
> a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
>
> b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
>
> c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
>
> d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

The method of applying and the weight to be given to the foregoing standards is left to the arbitrator. Ordinarily, a party proposing a change in a prior agreement must show that circumstances underlying the former provision have changed and that its proposal is necessary to meet those changed circumstances. Absent an severe inability of an employer to meet an offer of a party or the fact that a proposal would prevent an employer from providing vital public services, the arbitrator must select that offer on each issue which is closest to appropriate. I note that the better view of the economic aspects of this process would not limit an arbitrator to considering each item independent of the others. It is common to consider how the adoption of each impasse item would produce the closest to appropriate total package of wages and benefits. That approach is taken herein with respect to wages and insurance.

2. Wages

a. Positions of the Parties

UNION:

Unit employees received a very small increase in the 2009-11 collective bargaining because the bargaining unit voluntarily took a pay reduction at the request of the Employer in FY 2010. The parties agreed to a 0% increase July 1, 2009 and a 3% increase July 1, 2010. However, the Employer requested and the Union agreed to reopen that agreement at the Employer's request because the Employer represented that it projected that it would receive a reduction in state aid. The Union agreed to the reduction on that premise, but, in fact, the reduction in state aid did not occur. The result is that unit wage increases averaged only .8% per year over the two years of that agreement. The unrepresented faculty employees at the other two institutions were never asked to take a similar pay decrease.

The Union's wage proposal is extremely reasonable when compared with the settlements of other public employees in the state. All other state employee bargaining units received across-the-board increases of 2% July 1, 2011, 1% January 1, 2012, 2% July 1, 2012, and January 1, 2013. In addition, those employees continue to receive automatic pay increases of up to 4.5% to the maximum of the pay range. Although the Employer attempts to weaken the Union's argument by arguing that other employees of the University of Northern Iowa also "gave" give-backs at that same time, the relevant inquiry is the examination and consideration of the wage increase for the UNI-United Faculty bargaining unit.

The Employer's only dispute as to using the comparisons above appears to be with the use of the other state employees as a comparison group. However, this is a comparison group the Employer has previously used. This group was recognized in a prior award between these parties as being one which the parties have historically used. The only other comparison group that the parties have used is other universities which group was established by the Employer itself. This unit's average salary has fallen markedly in comparison to that group. This comparison establishes a need for catch-up.

The Union and Employer agree that unrestricted net assets have increased dramatically from $37 million to $76 million, more than doubling in the past five years from 2006 to 2010. We also agree that the change in net assets has increased from $14 million to more than $25 million. Moody's has given the university an "A-1" rating. In short, the Employer cannot claim inability to pay.

The Employer does not make an inability to pay argument. The Employer, instead, argues that even though they have the above increase, they have already otherwise committed the funds and they are therefore not free to use them here. This is no different than the situation in AFSCME v. State of Iowa and Governor Terry E. Branstad, 486 N.W.2d 390 (Iowa, 1992). In that case, the State took the position that although they did not have the inability to pay, the money was better spent on other priorities. The Iowa Supreme Court held that a public employer cannot avoid an adverse arbitration award by making other spending priorities. The Employer does not argue that it does not have an ever-growing amount of unrestricted net assets, but it has made the choice to commit them to other sources leaving no money for salaries. Simply put, collective bargaining agreements would in essence become a nullity of a public employer could always claim that it had chosen to use limited funds elsewhere. The prior award between the parties by Arbitrator Richard J. Miller supports the Union's conclusion.

During the arbitration hearing, the Employer testified that awarding the raise request by the Union would interfere with the Employer's ability to honor contracts and/or plans for certain funds. It also argued that it might result in program reductions and/or layoffs.

The Employer has not disputed that according to its own sources, Iowa wages should be raised by 3% to keep up with inflation in coming years.

Union witnesses Bunsis testified:

1. University net assets and University unrestricted net assets have not only increased, but its increase is occurring at an accelerating rate. In addition, the percent of net assets as a percent of total assets reached a high in 2010 of 64%, further indicating strong financial health
2. The Universities cash flow has been positive.
3. Regarding financial reserves, expendable reserves divided by total expense results in a primary reserve ratio of 40%. This is a high percentage demonstrating strong financial health
4. The net income ration is 9.1% well above the 5% which is considered "strong."

Testimony by Regents witnesses (UNI Administrators Mr. Schellhardt and Mr. Rieks) that the university is in grim circumstances financially (in addition to being short on specifics) are in contrast to audited financial statements, reserve ratios and Moody's Bond Rating. It is also in contrast to raises and performance bonuses enjoyed by upper administration over the past five years, including a $50,000 bonus awarded to the UNI president in the most recent Fiscal Year.

In terms of spending priorities, it is clear the Employer has preferred to increase the percent of its budget devoted to upper administration and other preferred spending categories, rather than the core instructional mission. The Employer has, over recent years, decreased both the number of faculty in relation to administrators; and the amount of raises for faculty as compared to administrators. Increases in wages for certain employees, and certain kinds of spending, coupled with increase in net assets and the reserve rations indicate spending preferences, and not financial emergency. Specifically, we have seen an increase in the number of students, an increase in the number of administrators, and a decrease in the number of faculty. In sum, At UNI, any shortage of funds is not due to actual financial problems, but due to discretionary budget choices.

As shown in United Faculty Exhibit 6, page 2, the loss of state appropriations in 2010 summed to $3.8 million, but was a small portion of the overall budget and was wholly overcome. The Department of Management was created to provide a framework and environment for integrating budgeting with planning to improve decision-making. The Department of Management's Revenue Estimating Committee forecasts continued and accelerating growth in the state. Furthermore, the benchmark Creighton Economic Forecasting Group clearly show the state of Iowa is experiencing healthy growth and is expected to continue to do so. In addition, state-wide wages are expected to climb and Iowa is currently in an inflationary cycle, not in recession. Although Employer witnesses testified that the State of Iowa usually experiences recessions after the rest of the nation begins recovery, United Faculty Exhibit under Bunsis presentation at page 35 documents that the Bureau of Labor Statistics numbers do not support this assertion. In sum, Regents testimony over the State of Iowa's economic health is in contrast to the Department of Management analysis as well as all other objective data sources.

EMPLOYER:

The Employer's compensation priorities for the 2011-13 agreement were to: 1. provide the faculty with an across-the-board increase within the limitations of the Employer's financial capabilities, 2. increase promotion increases for faculty who achieve tenure, or who are promoted to Associate Professor or Professor, 3. restructure health and dental benefits and its contribution rates for them, 4. reduce life insurance benefits to be in alignment with life insurance benefits provided by the State of Iowa to its employees and other Board of Regents universities, 5. eliminate the AD&D benefit which is a benefit not provided to the faculty at the University of Iowa, and 6. use the savings to pay for the across-the-board increase for the first year of the agreement.

The Governor's recommended budget for UNI for FY 2010 and 2013 is a 6% reduction in state aid from FY 2011 or a net loss of $6,109,107 in the Employer's General Education Fund. The Iowa House of Representatives budget bill is for s steeper reduction of $7,172,277 or $1,063,170 more than the Governor's proposal. Iowa's Universities have faced disproportionate share of budget cuts in recent years. This has caused tuition revenue to displace state funding as the primary source of revenue. Tuition is now 54.4% and state funding is now 39.7%. Tuition revenue has not made up the gap caused by cuts in State funding. A tuition increase of 12.6% would be necessary to compensate for the Governor's FY 2012 budget and 38% increase to close the gap from FY 2009. Instead the gap has been closed by efficiencies and enrollment growth. UNI has responded to the decline of State funding by:

- Deferring maintenance on buildings
- Furlough staff
- Reduce retirement contributions 20%
- Delay hiring
- Offer an early retirement benefit
- Use unbudgeted tuition revenue
- Reallocate and make permanent reductions in programs and services

However, to date, there have been no layoffs of staff.

The impact to UNI's budget is that it will enter FY 2012 with either a $6,109,107 or $7,172,277 less in State funding. Tuition revenue at the Board of Regents set tuition increase is projected at $4,057,360. Earmark funding is expected to decline $500,000.

The Employer must fund the statewide increase granted by the former Governor. The cost of this contract is $931,000. Wage and benefits for non-represented staff have traditionally followed those of this bargaining unit. The Employer's unilateral temporary reduction for defined contribution plans will end and, thus, its costs will increase by $929,000.

The Employer has proposed restructuring the health insurance benefit, dental benefit, eliminating the AD&D benefit and reducing life insurance. It proposes to use the savings in this unit to fund the first year wage increase it proposes.

The Board of Regents recommends a tuition increase for resident undergraduates of 5%. Because UNI's enrollment is 91.7% resident of Iowa and UNI expects an increase in enrollment of only 50 students. This is expected to result in an increase of only $4,057,360. UNI sets aside 18% of this to fund student aid. Thus, 18% is not available for salaries.

The turnover of faculty at UNI has declined between FY 2009 and FY 2011. The average number of resignations is 21.1. Therefore, the level of unit compensation does not appear to be a factor.

Unit employees' average salary has maintained their ranking among peer institutions. There has been less turnover here than in the past. Thus the existing compensation plan is adequate. The Board of Regents recently completed negotiations on a number of labor contracts for FY 2011. These settlements were modest and do not include automatic step increases. They support the Employer's position. It settled with COGS for 2% in the first year and 2.5% in the second year. The settlement with the SEIU at the University Hospitals was for 3% in each year of that contract. However, that settlement should be higher because they do not receive public money. The settlements with other State units by contrast were controversial and are not comparable. UNI is different because it has much larger public fund decreases than the State budget as a whole. Those settlements appear likely to result in layoffs and service reductions. Peer institutions are more comparable. Their average increases have been more modest than that proposed by the Employer.

b. Discussion

At the outset, the Union's argument requires me to address a jurisdictional issue. My authority is limited to determining the FY 2011 – FY 2013 agreement (July 1, 2011 to June 30, 2013. Factor 9. a. permits the consideration of past agreements of the parties. The Union allegedly improvidently agreed to amend the prior agreement to reduce the wage increase. It now seeks an adjustment based upon the fact that it was the result of what it believes to be a misrepresentation. I conclude that factor 9. a. does not permit me to undo a prior agreement of the parties. It does permit me to consider the impact of prior agreements on the facts underlying the current negotiations. For example, I can consider whether or not the Employer's ending balance allows some of those funds to be used for wage increases in this agreement and/or I can consider whether wage rates here are now low in comparison to the wage rates of employees doing similar work. I am allowed to consider the relationship of the parties as they present it through the hearing in this process.

The Employer has acknowledged that its bargaining goal was to favor a wage increase over maintaining benefits. That fact is considered herein.

The wage rate comparative data submitted by the Employer is based upon average salaries. The parties historically have compared themselves to a set of 10 other similar sized higher educational institutions in the U.S. This type of data can be skewed by irrelevant differences in the overall staff of the compared institutions. In fairness, the data shows that the relative ranking of this institution increased from ranging 6th and 7th place to 4th place in 2004. Thereafter, it has ranged in 4th or 5th place. In 2009-10 it was in 7th place nearly tied for 8th place. The data shows that it remained in 7th place, but the assumption of general increase underlying the data was incorrect. Corrected, it would be in 8th place.

The Union provided more specific data in the same comparison group, comparing the salaries of assistant professors rather than the faculty as a whole. Thus, this data is less problematic, but may be affected by length of service or other factors. The assistant professor classification is a position in which the Employer needs to be competitive to achieve its goals of having outstanding staff. In this data the Employer is 11th of eleven. In this group, it is nearly $2,000 less than the 9th lowest school. This comparison tends to account for the Employer's own emphasis in proposing wage increase over the preservation of benefits.

The Board of Regents settled with the SEIU at the University Hospitals for 3% in each year of the two year agreement. That settlement does not include steps and it appears that there is no wage schedule involving automatic step increases. The Employer agrees that this was an appropriate wage settlement under the current economic conditions in Iowa and argues that it was appropriate because the hospitals are economically totally independent of State funds. It settled with COGS (graduate assistants) for 2% the first year and 2.5% the second year. The Union compares its wage increase to the total of wage increase plus step movement in the State of Iowa bargaining units. All of those bargaining unit were settled when outgoing Governor Culver agreed to settlements shortly before he left office.[4] All of those settlements were for a 2% general wage increase 7/1/11, 1% 1/1/12 and 2% 7/1/12 and 1% 1/1/13, together with step increases which cost over the units about 4% per year. The foregoing settlements include the Governor's settlement with the non-professional employees of the Board of Regents all of whom are represented by AFSCME. The comparison criterion requires comparison of wage rates to employees performing similar work, but other settlements granted by the same employer and a broad range of settlements demonstrating a local pattern of general wage increases are commonly given heavy weight in interest arbitration.

The Employer's costing method is closer to appropriate. There are some aspects of its costing which are inconsistent with traditional methods used in labor-management relations, but it is sufficient for the purposes of this matter. It costs its proposal as having a net increase of $40,765 for FY 12 and $1,293,622 for FY 13. The reason for the low figure in the first year is the savings from its proposed reductions in benefits. It costs the Union's proposal at $1,293,622 for FY 12 and $2,409.353 for FY 13. The Employer costs its health and dental insurance <u>savings</u> for FY 12 in its benefits proposal as $325,986, whereas it costs the Union's proposal as a cost <u>increase</u> of $365,273. It costs the savings on its life insurance proposal as a savings of $136,155 in FY 12 and $3,402 in FY 13. It does not show a cost impact of the Union's position. It costs the savings of its AD&D insurance elimination as $38,734 in FY 12 and less than a $1,000 in FY 13. The cost of the Union's leave time proposal in release time is $63,539 for each person released per year.[5]

The Employer is going to again experience yet another reduction in state funding. Iowa like all other states is experiencing the result of tough economic times. This is a result of a decline in revenues and the ever increasing costs of delivering public services. At the same time, Iowans themselves are economically stressed. This includes many who have lost jobs or have had economic reductions in their existing jobs. Thus, the State of Iowa is forced to make difficult budget choices. One of the choices it has made is to significantly reduce its commitment to higher education.

In short, the impact to UNI's budget is that it will enter FY 2012 with either a $6,109,107 or $7,172,277 less in State funding. It is on this basis, the Employer seeks concessions from the Union. It is important to note that the Employer is not arguing that it has the inability to meet the Union's offer or that it is fiscally unsound. The testimony of the

[4] This has resulted in some controversy between the two Governors as to whether the raises were warranted.
[5] The full amount of those numbers is not included in the costing of the Employer's costing of the Union's proposal.

Union's expert, Prof. Bunsis, even in the light of the Employer's offered testimony, indicates that UNI is in sound fiscal shape. This is true in the light of the fact that in FY 2010, the Employer asked the unit to voluntarily agree to wage concessions. The Union voluntarily agreed to a temporary $500,000 wage concession.[6] The Employer also temporarily reduced its contribution to its defined contribution retirement plans. That request was, in part, made on the basis that it would lose $8.5 million in State funding on top of other cuts previously made. Although the Union agreed to those concessions and other employee suffered furloughs, the reduction in State funding did not occur. This resulted in the Employer doing better than expected financially. It also resulted, whether rightly or not, in it losing the trust of this bargaining unit in its requests for concessionary bargaining. This was compounded by the Employer's granting a $50,000 executive bonus and choosing to allocate some funds to a new marketing campaign. The Employer's financial soundness is also due in no small part to the Employer's astute financial management of the overall program.

The choice presented by the Employer is between increasing employees compensation or severe program reductions, including potential layoffs, lengthening the time to graduate and larger than desired increases in tuition. The Union is correct that unit employees cannot be expected to bankroll public services in tough economic times. This concept has already been recognized by the Iowa Supreme Court in AFSCME Council 61, et al. v. State of Iowa and Governor Terry E. Branstad, 484 N.W. 2d 390 (1992). That being said this unit has voluntarily recognized that there may be mutual self-interests between it and the Employer in its moderating compensation demands in those times. That is exactly what it did in the past agreement.
The total budget of the Employer is $258 million. The resulting total package with the benefits concession ordered below is about $1.1 million in the first year and about $500,000. It is reasonably possible for the Employer to absorb this difference.

The determinative question is whether in view of the substantial benefit savings granted below, the Union or the Employer final offer is closest to making an appropriate total package of wages and benefits. Part of the basis of the Union's wage offer is based upon either "catch-up" to improve relative salary ranking and/or recoupment of the prior give back. As noted the recoupment argument is beyond the scope of my jurisdiction and, therefore, over-reaching.[7] The Union's wage offer is far closer to that necessary to maintain an appropriate wage level and consistent with the general increases recognized by the Employer as appropriate and which were granted to State employees. The excessive concessions resulting from the adoption of the Employer's insurance is a more than reasonable shared sacrifice of this unit. The Union's offer as to wages is adopted.

2. Insurance

a. Positions of the Parties

EMPLOYER:

The record indicates life insurance coverage for AFSCME covered staff is $20,000. The same coverage amount is provided to all State employees regardless of whether they are union covered or not. At the other Regent Universities, it is currently two times salary with a Regent study group recommending a reduction to one times salary at all Regent Universities and

[6] The Union notes that faculty at the University of Iowa and at Iowa State University were not asked for similar concessions.
[7] That amount is the .25% at each wage increase point.

Schools. In conjunction with the proposed reduction, the Employer intends to offer employees the opportunity to supplement their life insurance through a group plan that provides guaranteed issue. The Employer also intends to reduce life insurance for non-organized staff. As noted above, the Employer has proposed that the savings from the reduction in life insurance will be used to fund the Employer's Faculty wage proposal and other increased contract costs promotions, summer fellowship, part-time salaries, and travel) in year one of the contract.

The Employer has proposed eliminating AD&D coverage as a Faculty benefit. During the last 10 years, UNI has experienced only one AD&D claim. At the University of Iowa, a voluntary group AD&D program was initiated in June 1980. Staff members pay the premiums and may purchase coverage in increments of $100,000 up to a maximum of $1,000,000. At Iowa State University AD&D coverage is provided to employees who participate in the life insurance program. The amount of accidental death coverage is twice the amount of the basic life coverage or approximately four times the annual budgeted salary for the staff member. For AFSCME employees, AD&D coverage is equal to the life insurance coverage amount of $20,000. In conjunction with the proposed elimination the Employer intends to offer employees the opportunity to purchase supplemental AD&D as a rider to their supplemental life insurance through a group plan that provides guaranteed issue. The Employer also intends to eliminate AD&D for non-represented staff. As noted above, the Employer has proposed that the savings from the elimination of AD&D will be used to fund the Employer's Faculty wage proposal and other increased contract costs (promotions, summer fellowship, part-time salaries, and travel) in the first year of the agreement.

The employees have had the same health insurance plan since 1977. The Employer has made proposals to modify the current health plan (CMM) during the last four contract negotiations. The expiring agreement provided for meetings between the parties to discuss health insurance changes. However, those meeting were not productive. The Employer has responded to the stalemate over health insurance with its proposals to deal with the continued spiraling increase in insurance costs. The current plan is extremely rich in terms of plan design (deductible and out-of-pockets) when compared with State offered plans and other Regent University plans. The Employer has proposed a reasonable compromise which retains the current plan but also provides employees a choice as health insurance consumers. The Employer has offered employees options as health care consumers; and that with the option to choose from three plans based upon plan design, cost of co-premiums, if any, and savings the market place will determine the benefit plan the employees selects. This is an improvement over the rigid plan in existence now. New employees would be restricted to the two new choices. The new PPO plan offers features that the current CMM plan does not. The new PPO plan offers preventive care at no cost, routine eye exams, and prescription drug card. Similarly the HMO offers preventive care at no cost, routine eye exam and prescription drug card. The PPO and HMO deductibles and out-of-pocket limits vary from the CMM. The PPO deductible is $300 single and $600 family. The PPO out-of-pocket limit is $1,500 single and $3,000 family. The HMO has no deductible or out-of-pocket. The provider network for the PPO is the same as the CMM (Wellmark BlueCross BlueShield network). Whereas, the HMO provides enrollees access to a list of primary care physicians, who refer patients to specialist and hospitals as needed. The Employer's contribution rate would be 100% contribution for eligible faculty members who enroll in individual PPO or HMO coverage with same dollar amount contributed to individual CMM coverage as is contributed to the PPO plan. The Employer has also proposed to increase its contribution for dependent coverage from 75% to 80% of the dependent premium cost of the PPO plan with the same dollar amount contributed to dependent CMM plan or dependent HMO plan as is contributed to the dependent PPO plan. Finally, the Employer has proposed to increase its contribution for dual spouse from the value of two individual plans to 90% of the dependent premium cost of the PPO plan and contribute the same dollar amount toward the CMM plan and HMO plan. The effect of the Employer's proposed rate structure is that employees selecting the single coverage PPO or HMO would pay $0 towards their insurance and only $23 per month for CMM. Employees enrolling in family PPO or HMO would pay $223 or $103 per month respectively, compared to $337 per month for CMM. Employees would save over the current premiums of the CMM plan now in existence. Any savings Faculty experiences could be applied to an IRS Medical Care Reimbursement Account to cover deductible and out-of-pocket expenses. In regard to out-of-pockets under the proposed PPO, the record indicates 84% of the employees did not meet the $500 out-of-pocket under the CMM plan. Assuming the trend continues then employees enrolled in the single PPO would only incur $381 in out-of-pocket expenses and $1,052 under the family PPO. Premium savings under the PPO family would pay the out-of-pocket expense incurred. Finally, a comparison of the Employer's health insurance proposal with health plans offered to faculty at the other Regent Universities indicates that it compares favorably. First, plan choice is component of the health insurance programs for faculty at the University of Iowa and Iowa State University and should also be at UNI. The plans offered University of Iowa Faculty include a comprehensive major medical plan (CHIPII) and PPO (UICHOICE). Iowa State University offers a PPO and HMO plan (Employer Exhibit # 23). Second, the deductible and out-of-pocket for plans at the University of Iowa and Iowa State University are closer to those proposed by UNI than the current CMM plan. Third UNI's proposed Employer/Employee contribution structure is similar to the University of Iowa and Iowa State University. At the University of Iowa faculty contribute $444 per month for CHIPII and $223 per month for UICHOICE family coverage. While at Iowa State University faculty contribute $18 per month for single PPO and $103 for family PPO and $310 per month for family HMO UNI also intends to provide the same health plans and contribution rates non-organized staff.

For dental insurance the Employer has proposed continuing the current dental plan (hereinafter Plan 1) and offer a new enhanced dental plan. 2). The Employer's contribution rate for Plan 1 will remain at 100% . The Employer contribution for eligible Faculty members who enroll in individual Plan 1 dental coverage with the same dollar amount contributed to individual Plan 2 dental coverage as is contributed to the Plan 1 dental coverage. For dependent coverage the Employer will continue to contribute the same dollar amount toward dependent coverage as is contributed for individual coverage; and for dual spouse/domestic partner the Employer's contribution will continue to be the contribution of an additional individual coverage toward the purchase of dependent coverage. Plan 2 dental coverage, however will be restricted to individuals enrolling in PPO or HMO health coverage; and enrollment in Plan 1 coverage will be restricted to eligible employees who commence employment before June 30, 2011 The Employer also intends to provide the same dental plans and contribution rates non-organized staff.

The Employer has proposed that the savings from the changes to life, AD&D, health and dental plans will be used to fund the Employer's Faculty wage proposal and other increased contract costs (promotions, summer fellowship, part-time salaries, travel) in year one of the contract.

The Union argues, however, that there is no need for change; that the Employer's insurance reserves are more than sufficient to cover claims under the current plan; and that premium cost for the CMM actually declined. The Union's position is without merit. At the hearing, the Employer's Benefits Manager, Cindy Webb, testified that the reason CMM rates went down is that the Employer spent money ($1.7 million) from its insurance reserve to buy down the rates. Ms Webb also explained that the balance of the insurance reserves are used to meet the State insurance reserves requirement (25% of claims-$4 million);and pay insurance premiums for former employees who retired under the Employer's early retirement program ($2 million). Finally, she verified that the excess insurance reserves amount was only $436,661 and not $8.2 million as argued by the Union.

UNION:

The present plan has been in existence since 1978. It is self –funded. The current insurance plan has a healthy and continually increasing unspent balance. The fund balance has increased form $1.7 million in 2006 to $8.2 million in 2010. The insurance premiums have actually been reduced from, for example, $1317 for family in 2010 to $1225 for family in 2011. Employer witnesses testified that they expected that for 2012 they might rise by 7% or back to the same level they were in 2010. All other state employees reached agreement with no changes to their health insurance plans. All of them have plans with no contribution for single coverage and at least one choice with no family contribution. The Employer's HMO plan was not subject to bargaining, but offered at the last minute in mediation. Not only does the Employer's offer increase premium contribution, they increase significantly the out of pocket maximums. Therefore, the Employer has failed to establish a need for change in any aspect to their insurance plan.

The life insurance has been the same since 1981. Accidental death and disability has been in existence about the same amount of time. There have been no changes in the health and dental plan for other state employees. No state employee pays anything for the single plan and all have the option to purchase at least one family plan which costs them nothing. Here unit employees must pay $3,000 per year for family coverage.

b. Discussion

The Employer projects that it will save about $325,986[8] from its proposed health insurance changes, $136,000 from its proposed life insurance changes and $38,000 from the elimination of the AD&D plan. I address the Employer's proposed changes in the insurance package on the basis of individual benefits because the basis of evaluation for each is somewhat different.

The parties have maintained a life insurance benefit for this bargaining unit. The sole arguments the Employer has made in favor of this proposed change is that the reduction is needed to achieve cost savings and that the benefit is excessive. The Employer relies on comparisons to AFSCME covered staff that have $20,000 of coverage. It acknowledges that its other two institutions have a two times budgeted salary benefit. It notes that the Board of Regents is "studying" reducing that benefit to one times salary.

On its merits alone, the Employer has failed to show any reasonable need for change. Unlike health insurance, a public employer has little direct benefit from offering a benefit of this type. By contrast insuring that public employees remain healthy is of significant concern to public employers and the public at large. The reasons for offering this benefit to faculty are to compete with other higher level institutions and other private sector opportunities for the best faculty and because the benefit is tax deductible. In the absence of evidence such as that the

[8] See, for example, Employer brief, p. 3.

level of coverage is in excess of that which unit members would ordinarily carry themselves, the benefit is a much better use of salary dollars than direct wages.

The Employer's arguments in support of its "concession bargaining" are discussed elsewhere. However, the Employer has failed to show why even under those circumstances the benefit it offers to the bargaining unit should be less than that it offers to its unrepresented employees at other institutions.

The parties have maintained an accidental death and dismemberment policy which pays a benefit upon accidental death equal to two and one-half the employee's budgeted salary or $250,000, whichever is less.[9] The dismemberment benefit is not in evidence. The Employer had made two arguments in favor of its proposed change. The first is that it needs the savings to offset funding reductions. The second is that the policy is not worth the expense. The latter argument is determinative.

At University of Iowa, that University established a voluntary self-pay AD&D program in 1980. At Iowa State AD&D coverage is provided at employer expense to employees who participate in the life insurance program with a benefit equal to four times the employee's budgeted salary. For AFSCME employees, AD& D coverage is equal to their life insurance benefit which is $20,000.

Cindy Webb, the Employer's benefits manager, testified, without contradiction, that in the last ten years, the Employer has experienced only one claim under this policy. While the Union disputed this, it offered no contradictory evidence. The Employer has represented that it will offer a self-pay, guaranteed-acceptance plan to employees. It is in the parties' mutual self interest and also in the public interest that benefit dollars be focused on the most productive allocation of resources. The Employer has represented that it will offer a self-pay plan to employees. The projected savings from this is about $39,000 per year. The Employer's position as to this benefit is correct.

Turning to the health insurance, the current and only plan, CMM, will costs employees nothing for the single plan and $306 per month for the family plan under the Union's proposal. The Employer proposes to increase that contribution to $23 single and $337 family per month. The Employer is proposing no change to the design of the current plan, but is effectively proposing to grandfather the existing plan out, with new employees required to take plans with benefit levels more akin to those offered at the two other universities. Existing employees who opt into those plans will not be allowed to return to the CMM plan. There is no evidence as to the premium cost of the State of Iowa plans and their benefits. Appendix A to this award is a comparison to the plans which the Board of Regents offer to professional faculty and others at University of Iowa and Iowa State.

The Employer has offered three reasons for its position. First, the benefit level of the existing plan is outdated and inefficient. Second, the parties have been at a prolonged stalemate over making any changes to the existing plan. Third, it needs the savings from all its insurance proposals in order to fund the Employer's Faculty wage proposal and other increased contract costs (promotions, summer fellowship, part-time salaries, and travel) in year one of the agreement.

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[9] Two and one half the budgeted salary is equivalent to the life insurance benefit of the same amount.

Benefits Manager Cindy Webb testified to the rationale behind the structure of the Employer's proposal. She credibly testified that the Employer has been met with continually rising medical costs. The current CMM plan is self-funded. The reason that premium equivalents have been moderate and have gone down is because the Employer has applied additional reserves to the insurance plan to "buy down" the premium equivalent. While there is some cost-shifting in this plan to employees from the Employer, the essence of her testimony is that there are substantial cost-saving features. Thus, she noted that in the period 2005 to 2009, 83% of beneficiaries in the CMM plan never met the full deductible under the policy. Thus, the tenor of her testimony is that the premium cost savings of the increased deductibles and out-of-pocket maximums will not significantly affect those beneficiaries. Beneficiaries who might only occasionally go above the deductible and out-of-pocket maximum might be able to offset those costs with the savings from the employee's share of the lower cost premiums using a Health Savings Account. Employees who chronically go to those maximums can benefit from the HMO. The plan also saves money for both employees and the Employer with the greater provider discounts which the PPO and HMO have over the current point-of-service plan. The cost shifting in the form of greater premiums to the employee for the CMM, while not necessarily desirable, do serve as an incentive for employees to move to the more efficient health plans.

I also note that the Employer's proposal compares better with the existing benefits at the University of Iowa and Iowa State. Although these are unilaterally established plans, in this context it is likely that the Board of Regents is under a reasonable amount of pressure to be competitive for benefits for faculty. The Employer has demonstrated both that circumstances have changed concerning health insurance and that its proposal is reasonably necessary to address that change.

The dental plan proposal does not affect the result as to this issue. Therefore, it is not discussed. While the Employer has clearly over-reached on this proposal its position is more nearly correct. The over-reaching is addressed as much as possible by considering the appropriate total package of wages and benefits a whole above.

3. Grievance Procedure

UNION:

The Union has met its burden of proof to show that Union's proposal that the Union have the right to grieve is appropriate. The Union has established that there are numerous instances that have arisen over which it could not grieve. The last of these were issues over the administration of the Employer's merit pay plan criteria. No employee wanted to grieve because the grievance would be presented at the first step of the grievance procedure to the same person who would make a determination as to the grieving employee's merit pay. The inability of the Union to grieve makes it difficult for it to discharge its duty to fairly represent employees. It also tends to create inferences of past practice which are not correct.

EMPLOYER:

The current provision has been in the parties' agreements consistently since about 1979. It is sufficient to meet the Union's needs. The Union is allowed under the grievance procedure to file grievances only over organizational issues. The Employer and Union have regular union-management meetings to discuss issues of concern to the Union. The fact that employees regularly file grievances demonstrates that the Union's argument that employees are too afraid to file grievances incredible. The Employer will be led on regular wild goose chases over grievances in the absence of controls over Union grievances specifying: a. the specific issues, b. the relief sought, c. the date of the incident(s) or alleged contractual violation, d. the specific sections of the agreement allegedly violated, e. the name of the affected employee

Discussion

The testimony demonstrates that circumstances have changed. Unit employees have expressed fear to Union representatives that if they file a grievance themselves with respect to merit pay determinations, the grievance would be processed by the person who makes those determinations. It is in both parties' interests that disputes in which employees are fearful of reporting matters for fear of retaliation be processed in a manner in which those matters can be brought to light. The Employer's counter-argument that the parties' informal non-binding sessions with the Union are sufficient to allow those matters to be addressed is without merit. First, if the Union is not able to have binding interim orders and final decisions, there is no way they can assure employees adequate protection when they do come forward and ultimately are identified in the process absent unlawful behavior by the Employer's agents. Second, there is little incentive for the Employer to seriously investigate and remedy matters. Third, in those situations which involve persons of great power, the Employer will not be able to deal with them without outside intervention. It is in those latter situations in which the Employer has the greatest mutual self-interest with the Union.

The Employer expressed its concern that without adequate identification of the specific persons and nature of the dispute it would be led on a "wild goose" chase. The agreement still requires the Union to provide as much specific information as possible and the grievance procedure provides an opportunity, if not a requirement, to be specific about these disputes. The Employer is free to propose specific changes to the grievance procedure in future agreements to improve the system. The Union's position is adopted.

4. Union Business Leave

UNION:

The Union's Faculty President testified that the workload is such that a current amount of release time is inadequate to serve the needs of the more than 700 bargaining unit members. The cost of this increase is somewhere between the sum of $16,000 to $22,000 which is modest. The comparison to other bargaining units establishes that the release time is allowed in other similar universities who engage in collective bargaining.

EMPLOYER:

The current provision was first adopted in the 2009-2011 agreement. Union business was conducted prior to that time without any release time. Having the Employer pay the full cost of release time is expensive. It is also unnecessary because of the relatively low number of grievances filed. Release time also has the unwanted consequence that adjunct faculty rather then tenure track faculty teach during the release time. Faculty members teach twelve credit hours per semester. The Union has proposed to eliminate the requirement that an adequate substitute be found. The result of this proposal is that the Employer may not be able to offer some courses or not offer them as much as is necessary. The parties reached agreement on the current provision because the President of the Faculty Senate has a similar release even though he or she never really accepts it. Finally, comparable universities that offer release time require their unions to pay the cost. Similarly, the AFSCME (state-wide) contract requires that that union reimburse that employer for the cost of release time.

b. Discussion

The establishment of liaison positions such as those sought by the Union is a subject which necessary involves an employer in assisting a union to be established in its representative capacity. While appropriate liaison positions are generally allowed under law, it is a subject over which an interest arbitrator must exercise extreme care.

The current release time agreement was negotiated with the previous agreement. The Union has not shown any significant change in circumstances since that agreement was negotiated. There is little comparability for similar positions among the institutions the parties use as comparables.

Employer-paid union liaison positions are used in very large bargaining units. Ordinarily they are most successful if they result from a long-established relationship. They work best in cooperative relationships, but even in adversarial relationships they tend to be successful where there is a high degree of trust between the parties. Each party has expressed high level distrust of the other throughout these proceedings. This includes, for example, the Union's distrust of the Employer with respect to its voluntary wage reductions in FY 10. The Employer has expressed distrust that allowing the Union to file grievances will result in "wild goose chases." For all of the foregoing reasons, the Union's proposal on this point is not supported. The Employer's position on this issue is adopted.

AWARD

The parties shall adopt the position of the Union as to Wages, the Employer as to Insurance, the Union as to Grievance Procedure and the Employer as to Leave.

Dated at Sun Prairie, Wisconsin, this 11th day of March, 2011

Stanley H. Michelstetter II

Stanley H. Michelstetter II,
Arbitrator

APPENDIX A

Salient Features of Current CMIM Plan and Employer Proposed Changes					University of Iowa	Univeristy of Iowa	Iowa State	Iowa State
2011	CMM proposed	UNI PPO proposed	out of network	UNI HMO prposed	Comp. Health	UI Choice	PPO	HMO
Single Monthly premium	$470	$447		$397	$593	$447	$460	$445
employee contrib	$23	$0		$0	$0	$0	$18	$0
Family Montly premium	$1,225	$1,111		$991	$1,337	$1,116	$1,133	$1,507
employee contrib	336.20	223 = 20%		$103	$444	$223	$103	$310
Deductible	100.00	300 single	600 single	0.00	$1,200	$0	in network $0 out $300	$0
		600 family	1200 family	0.00	$3,600	$0	out $600	$0
Coinsurance percentage	10%	10%	39%	10%	10%	levels 1&2 10%, 3=40%	in 10% and out 20%	$0
Out-of-Pocket Max.								
single	$500	$1,500	$1,500	$500	$4,200	*	in $1,500 out $3,000	in $0 out $1,500
family	$500	$3,000	$3,000	$1,000	$8,400	*	in $3,000 out $6,000	in $0 out $3,000
Prescription Drug								
	10% after $100 deduct.	$10 generic	same + bal. Billed	$5 generic	$0 generic	$0 generic	$10 generic	$10 generic
		$25 formulary	same + bal. Billed	$10 brand name	$1,200 deduct then 10%	30% formularly	30% preferred brand	30% preferred brand
		$40 brand non-formul.	same + bal. Billed			name 50%	50% non-preferred brand	50% non-preferred brand
		90 day supp. Option	same + bal. Billed					

*Combined out-of-pocket maixmum for level 1 and 2 services is $1,700 single and $3,400 family. For level 3 services $2,000 and $4,000. Prescritpion drugs $1,100/$2,200

CERTIFICATE OF SERVICE

I, Stanley H. Michelstetter II, certify that on the 11th day of Mar, 2011, I served the foregoing Award of the Arbitrator upon each of the parties to this matter by mailing a copy to the m at their respective addresses as shown below:

Iowa Board of Regents
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Stanley H. Michelstetter II

Stanley H. Michelstetter II, Arbitrator